

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MANUEL GARZA and VELKYS RIVERA,

Plaintiffs

v.

EAGLERIDER HOLDINGS, et al.,

Defendants

Case No.: 2:22-cv-01765-APG-BNW

**Order to Show Cause Why This Action
Should Not Be Remanded for Lack of
Subject Matter Jurisdiction**

Harley-Davidson Motor Company Group, LLC, which asserts it was incorrectly named as defendant Harley-Davidson Motor Company, Inc., removed this action from state court based on diversity jurisdiction. ECF No. 1. Assuming the limited liability company is the proper defendant, then it did not identify the citizenship of its members. *See Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (stating that “an LLC is a citizen of every state of which its owners/members are citizens”). Consequently, I cannot determine if complete diversity exists.

Further, if removal is sought based on diversity of citizenship, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.” 28 U.S.C. § 1446(c)(2). If the initial pleading seeks nonmonetary relief or “a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded,” then “the notice of removal may assert the amount in controversy,” but only “if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).” 28 U.S.C. § 1446(c)(2).

Federal courts are courts of limited jurisdiction. . . . It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction. . . . This burden is particularly stringent for removing defendants because the removal statute is strictly

1 construed, and any doubt about the right of removal requires resolution in favor of
2 remand.

3 *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 773–74 (9th Cir. 2017) (simplified).

4 “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first
5 instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). Where “it is unclear
6 what amount of damages the plaintiff has sought,” as with claims governed by Nevada Rule of
7 Civil Procedure 8(a), “then the defendant bears the burden of actually proving the facts to
8 support jurisdiction, including the jurisdictional amount.” *Id.*

9 To determine the amount in controversy on removal a court may consider the facts
10 alleged in the complaint and in the notice of removal, and may “require the parties to submit
11 summary-judgment-type evidence relevant to the amount in controversy at the time of
12 removal.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (quoting
13 *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335-36 (5th Cir. 1995)). A court also has
14 discretion to consider a plaintiff’s formal judicial admission that the amount in controversy is
15 met. *Id.* at 376.

16 In *Gaus*, the Ninth Circuit vacated the district court’s grant of summary judgment
17 because the federal court lacked subject matter jurisdiction; the Ninth Circuit remanded with
18 instructions to remand the case to the state court. 980 F.2d at 565, 567. The plaintiff had filed
19 suit in Nevada state court, seeking damages “in excess of \$10,000.” Upon removal, the
20 removing defendant alleged that “the matter in current controversy . . . exceeds the sum of
21 \$50,000.” *Id.* at 565. The Ninth Circuit found that the removing defendant “offered no facts
22 whatsoever to support the court’s exercise of jurisdiction,” and held that “[t]his allegation,
23 although attempting to recite some ‘magical incantation,’ neither overcomes the ‘strong

1 presumption' against removal jurisdiction, nor satisfies [the removing defendant]'s burden of
2 setting forth, in the removal petition itself, the underlying facts supporting its assertion that the
3 amount in controversy exceeds \$50,000." *Id.* at 567.

4 Here, as in *Gaus*, Harley-Davidson has offered no facts to support the court's exercise of
5 jurisdiction, and the plaintiff's allegations in the complaint provide none. Accordingly, I cannot
6 exercise subject matter jurisdiction in this action. But before dismissing this action for lack of
7 subject matter jurisdiction and remanding to the state court, I will permit Harley-Davidson to
8 present any evidence relevant to the amount in controversy at the time of removal.

9 I THEREFORE ORDER that defendant Harley-Davidson Motor Company, Inc., which
10 claims it has been incorrectly named in this action, shall file a motion to change to the caption to
11 accurately reflect the correctly named defendant by October 28, 2022.

12 I FURTHER ORDER that defendant Harley-Davidson Motor Company Group, LLC
13 shall show cause, in writing, as to why this action should not be remanded to the state court for
14 lack of subject matter jurisdiction as described above. Failure to show cause by November 4,
15 2022 will result in remand to the state court.

16 DATED this 21st day of October, 2022.



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18 ANDREW P. GORDON
19 UNITED STATES DISTRICT JUDGE
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